Canadian Centre for Occupational Health and Safety

Centre canadien d'hygiène et de sécurité au travail

Workshop on Drug Testing in the Workplace

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Canadian Centre
for Occupational Health
and Safety

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Summary

By early 1987 newspaper headlines blared drug testing as a solution to the social problem of drug use.

"Drugs" were a serious current problem. How serious was uncertain; how to solve it was unclear. Urine testing of prospective and existing employees was being advocated. The Canadian Civil Liberties Association acknowledged that there might be an argument for drug testing "in some extraordinary situation"; statements from labour unions expressed strong opposition to such testing; some companies were contemplating it.

The issues identified by opponents of testing included violation of the human person, invasion of privacy, and assumption of guilt. They pointed to possibilities of error or even malice. They highlighted the need for reasonable cause, due process, and redress mechanisms. Proponents pointed to the way drugs among workers may bring danger to public and co-workers, undermine productivity and morale, and cause absenteeism.

The issue had been raised at a meeting of Ministers responsible for occupational health and safety as one which deserved national attention and a committee had been established to prepare a report.

An occupational physician, having seen in the workshop on medical surveillance that progress could be made on tough issues involving social and technical questions, requested the Centre to hold a workshop on drug testing in the workplace.

The Centre's Executive Board (a tripartite board of the Council of Governors) approved a proposal for the workshop with a conference to follow some six months later.

A national union was consulted and enthusiastically agreed to share in the planning process with the requester and the Centre.

The plans were to hold a small workshop restricted to industries which either had instituted testing or were seriously considering testing, and who were confronted with the problems. The industries pinpointed were transportation (air and rail), chemical, automotive, and laboratory. The appropriate invitees were chosen at the vice-president operations, union leadership, and medical director level.

An opening panel dealt with scientific validity and social validity from the legal and human rights points of view. In work groups, the issues discussed were (1) forms of testing—mandatory, random, upon suspicion, upon proof, after an incident, near death, after death; (2) validity of tests; (3) situations where testing might be justified; (4) safety; (5) human rights.

The last plenary session on June 10 reported the conclusions and recommendations of labour, management and occupational health

Summary
continued

physicians. A reaction panel listened and commented on the conclusions. The panel consisted of Dr John Kirkbride, Director, Occupational Health Unit, Health and Welfare Canada, and Martin O'Connell, Chairman of the Council of Governors of the Canadian Centre for Occupational Health and Safety, who graciously and most capably fielded a last-minute challenge to stand in for panelist Glenn Thompson, Deputy Minister of Labour for Ontario, unavoidably detained elsewhere.

At the close of their two-day deliberations, the participants decided to communicate their conclusions to Ministers and Deputy Ministers responsible for occupational health and safety, Transport Canada, and Health and Welfare Canada—the decision-makers who are grappling with the issues of drug use and drug testing.

The communication was prepared and sent by the Centre, after it was reviewed by the chairmen of working groups.

Conclusions of the deliberations

Agreed were:

- recognition that drug abuse is a problem of unknown magnitude, but testing will not solve it or measure it
- testing does not measure performance or ensure safety
- there should be no mandatory or random testing in the workplace, even for safety reasons
- any testing program for just cause should be jointly agreed by labour and management—any application of testing must be for the health and welfare of employees
- joint labour-management employee assistance programs must not be undermined by close association with drug testing—one is constructive, the other is punitive

Needing further discussion:

- pre-employment drug testing

Management strongly wanted to preserve its right to protect itself in the hiring process; neither labour nor occupational physicians considered pre-employment testing justified.

Other Comments:

- drug testing, whether mandatory or random, is contrary to the best general approaches to occupational medicine

Conclusions of the deliberations
continued

- testing for drugs can shift the focus from other controllable causes of accidents.

Responses

Responses from Ministers have shown concern with the issue and an undertaking to consider the recommendations and conclusions of the workshop before drafting legislation.

Welcome and introductions

Welcome to the workshop. My name is Gordon Atherley; I am the President of the Canadian Centre for Occupational Health and Safety. I am going to welcome you, describe CCOHS and ask Lillian Vine, Manager, Committees and Workshops, to introduce the panelists.

The Canadian Centre for Occupational Health and Safety is an organization created by an Act of federal Parliament. It is governed by a tripartite Council of representatives of management, labour and government in all the regions of Canada which makes for a 39-member Council. The Council determines our policy. The money we spend is the federal government's. This creates an interesting balance where there is a need for a consensus between the Council and the government.

In the early days there was great fear that this federal instrument would create all kinds of problems because occupational health and safety is mostly a provincial jurisdiction. The question was "What should this organization do?" The answer came back that information was a vital role which was not being dealt with adequately in Canada and something in which the Canadian Centre for Occupational Health and Safety, this new organization, could have an important role to play.

That was back in 1978/79. Since then, the predictions have turned out to be true. Information has become more important partly because that is the way occupational health and safety is going and partly because that is the way technology is evolving. We have found ourselves being carried along by this revolution and also by being part of it.

This is not directly relevant to the workshop, but I would like to show you CCINFOdisc of which we are very proud. It is the product of this information revolution, and we are applying it to the benefit of occupational health and safety.

You will recognize this as a compact disc that normally plays music. This one carries information and one disc can carry 250,000 typewritten pages of information. With a microcomputer, a screen and printer you can store the equivalent of a pile of paper three or four times the height of this room; the laser beam that reads this disc can get to any word in that 250,000 pages within about two seconds. For storing legal judgments, Material Safety Data Sheets, laws, voluminous literature on occupational health and safety, there is nothing to beat it. We offer CCINFOdisc as a public service; a subscription of $100 a year plus mailing costs buys four discs; one million pages of information. If you compare that with the cost of putting ink on paper, it is quite clearly a revolution. CCOHS is in the business of harnessing that revolution so that the information becomes widely available to all Canadians for solving occupational health and safety problems.

Welcome and introductions
continued

In doing the information work, we graphically came to see that there is information that is factual, numbers or data; but there is another set of information which has less to do with data and more to do with opinions, judgments, values, considerations and concerns, and that quality of information is not just generated by scientists, computers, libraries or research. That information with value added comes from the judgments of people who have responsibilities to occupational health and safety. We, the staff of the Centre, realized we could not generate that kind of information but we could bring together people with responsibilities in a workshop situation so that they would consider the facts, opinions and dimensions of problems, and they would add to the value of the information. That is what the workshop is about, not data, but the difficult issues, the judgments, the values added to this very vexing issue of mandatory drug testing.

That brings me to the workshop and I would like to introduce Lillian Vine who is going to describe the workshop.

Introduction of panelists

Lillian Vine

Welcome. As Gordon said, the type of information that does not come from numbers is being generated by these types of workshops. Over the next day, you will discuss issues which trouble you and society greatly; you can hardly pick up a newspaper without seeing something about drug testing—whether there is a problem with drugs, whether drug testing can fix it, or go any part of the way toward fixing it; these are some of the questions that we were told were of burning interest to people. We were asked to bring together a small group of invited people to deal with these issues and to produce some conclusions you can agree on, and define the areas that you cannot agree on.

The plenary sessions are being taped. From the tapes we prepare proceedings which you and we can distribute. The draft will be circulated for review to the chairmen.

I would like to introduce the chairmen of the three groups. They are Tony Hammer, Medical Director for Polysar; Jack Soutendam, Administrator for the Canadian Air Line Pilots Association and Neil Johnston, Administrator of the Regional Lab Program in the Hamilton area. Today you will work in tripartite groups, tomorrow you will meet in homogeneous groups. That is, physicians will meet in the final session, review the discussion which took place in the tripartite groups and come up with their conclusions or recommendations or both, as will management and labour. The chairmen will remain the same. Tony Hammer will be the chairman for the physician group, Jack Soutendam for the labour group and Neil Johnston for the management group.

Lillian Vine *continued*

I have an apology to make. The Department of the Secretary of State provides us with translation services. The plenary sessions were to be simultaneously translated; the Department called Friday and said it could not provide interpreters. June is a busy month for meetings and it was impossible for us to find other interpreters at that late stage. The proceedings, of course, will be in both languages.

We are going to start with a panel discussion on the scientific validity of tests, and the social validity of tests. I will briefly introduce our panelists in reverse order: Sandy Chapnik is a lawyer; she graduated from Osgoode Hall in 1976, and is a proud mother of four teenagers. She has been on the Council of the Canadian Bar Association for the past three years and is Chairman of the Constitutional and Civil Liberties Section of the Canadian Bar Association, Ontario Branch. Last year, she was asked by the President of the Ontario Branch to form a special committee to look into the questions of drug testing. She is very well qualified and we are delighted she is with us to speak about the human rights and legal issues of drug testing.

Dr Ram Gupta, who will present first, holds a PhD in Chemistry from McMaster University, is a professor in the Department of Pathology at McMaster University, and works at St Joseph's Hospital, which is part of our regional laboratory system and specializes in drug analysis.

The moderator will be Gordon Atherley who is the President and Chief Executive Officer of the Centre and a great salesman for CCINFOdisc. There will be ample time for what I hope will be ample discussion.

Panel presentations

Gordon Atherley

I want to set the scene by identifying from the handout we gave you some of the headlines such as, "Where will tests lead?" "Drug testing guidelines sought." "Accuracy of tests questioned." "Ottawa, provinces agree to study on-job drug tests." "Ontario weighs legality of drug test program launched at auto plant." These show that this topic is one that is occupying a lot of people's attention right now. It reflects the tendency of society to turn to tests when there are serious problems. This morning on the radio, I heard about President Reagan talking about AIDS testing. A few months ago he was talking about testing everybody for drugs; a few months previous to that it was the herpes problem. Tests are looked at as the solution to perceived problems in society. One of the issues that we have to look at is the scientific basis of the

Gordon Atherley *continued*

tests, what they do and don't do; and the second is how such tests fit into the legal framework of the country, including such things as human rights. Dr Ram Gupta.

Ram Gupta

The use of drugs is not new. Right from the dawn of civilization people have been taking drugs. Perhaps even primitive man realized he needed something to calm him down or relax him after a day's work. In the last few years it seems to have become a very serious problem, particularly in the US army. On a US ship many accidents were found to be drug related. And the efficiency of the US fighting men was less than par in Vietnam—one could say that was because they didn't want to fight, or because they were addicted to drugs—and the idea of drug screening took hold.

Industry took on the idea that performance below expectation is because of drug abuse, that perhaps people were not buying American goods and cars because the workers were on drugs and their performance was less than expected. There is no scientific study to relate performance with drug abuse; there is no conclusion. It is claimed that Japan is doing better because there is no drug problem among workers compared to US workers. However, there are other countries performing poorly even though workers are not on drugs. So drugs themselves may not be the cause of poor performance. There is no final conclusion that drugs have anything to do with performance, but we presume that performance would improve if people were not taking drugs, particularly in some kinds of industry.

The second issue is about safety. Once a person is impaired, in heavy industry, or in airlines, when people think of consequences to their own life, drug testing starts to seem a good idea. Once again, there has been no demonstrated relationship; more accidents can be attributed to non-drug use than to drug use causes. The biggest airline accident was a Japanese airline, and no drugs were found there; another was the destruction of the Air India plane in Ireland, and no drugs were found there.

This is one of the hardest subjects. We cannot say how useful it has been to find out whether pilots were taking drugs or not. On the other hand, drug testing may be proving to be a deterrent. I recently attended the CORPUS symposium in Toronto. The Personnel Manager of Edison Electric Company in New Jersey presented data that since they have started a drug testing program, they haven't found anybody using drugs in their workplace. Before that program, they could detect 5 to 10% use, but after they instituted testing, the employees knew that they would be tested

Ram Gupta *continued*

for drugs during their annual physical, and no drug use has been detected.

One of the objections that many workers and all the unions are making is based on the reliability of drug analysis. If the results are falsely positive, that may affect the job status, the worker may be disciplined. I have been asked to say, "What is the technical status – are those tests reliable?" As far as I think, yes; technology has advanced quite a bit and if we are willing to spend the extra money, the results are quite reliable.

The first question is, "Which drug to screen at the workplace?" In sports, for many years, all the athletes in the finals are screened, and at all national and international competitions all have been screened. Any compound which can affect performance will be screened, even caffeine. The international Olympics have started screening for caffeine; too much caffeine can affect performance.

In the workplace, screening is confined only to a few drugs which I list here (slide 1).

Slide 1

DRUG SCREENING

Which DRVG

Sport Workplace	Comprehensive Controlled Drugs
Drug	**Analog**
Cannabis	—
Cocaine	Procaine Tetracaine Lidocaine
Morphine	Codeine
Amphetamine	Phenylpropanolamine Ephedrine

These are only four drugs, cannabis, cocaine morphine, heroin, and amphetamine, which are commonly screened. If so many other drugs affect our performance in the Olympics, why are we confining ourselves to testing for these four drugs in the workplace? There is no glamour to the other drugs available over the counter.

Ram Gupta *continued*

No crime is involved in them. We can go and buy them and nobody worries. The pusher doesn't sell codeine, because you can buy codeine over the counter. The pusher wants to sell morphine. All our efforts in the workplace are confined only to these four so-called illegal or controlled drugs.

Ninety-five per cent of positives in tests are only two: cannabis and cocaine. Cannabis is number one and cocaine number two. Despite the fact that there are many people who may be addicted to heroin, the use of morphine or heroin is declining and the use of cocaine is increasing. Use or abuse of amphetamines is largely confined to truck drivers; the general public does not use amphetamines anymore. In this column I have listed some of the analogs which, if taken in larger amounts, would produce similar effects to those of controlled drugs, but we do not test for them. In fact our effort is that we should be able to distinguish between cocaine and its analogs. If we do find analogs, we shall report cocaine not detected or cocaine negative although they may produce similar effects. In sports, the situation is totally different. Any of these compounds could disbar the athlete; athletes are expected to take no drug which could affect performance.

How are these tests done? The industry which developed these assays has played a big role in making drug screening popular (slide 2).

Slide 2

ANALYTICAL PROCEDURES

Immunoassays

FPIA	ABBOT
EMIT	SYVA (Syntex)
RIA	ROCHE

- Easy to perform
- Automation
- High sensitivity
- Excellent to poor specifity

Some companies I have listed here, Abbot, Syva and Roche, have developed reagents which make it possible for even a semi-skilled person to do this assay. The screening can be done in a physician's office or in a workplace, after a few hours of training. What is this technology? They have made an antibody. They take the drug and conjugate it with protein and inject it into an animal such as a rabbit and then they take this serum which is called antibody.

Ram Gupta *continued*

With a different kind of label, when they mix a urine sample containing a particular drug, there would be some reaction; an automated instrument would then indicate if the drug is or is not present.

The tests could be made quantitative but they are marketed as qualitative tests. They have made a cut-off point that if the concentration of a particular drug such as cocaine metabolite is less than 300 nanograms per ml, the report is negative. If it is higher than that, the report is positive. But the way that is presented does not say how much there is - is it 700 or 1,000 ng/ml? If required these assays could be modified to do that or to increase sensitivity.

For some drugs, these reagents are highly specific. For cocaine and cannabis they are highly specific; there is no other compound that will react with them. For some, there is poor specificity. If we want to test for morphine, it will react with codeine. It will react with any other compound which is present in poppies, and it will react with many synthetic analgesics. That is also true for amphetamine. Therefore, the vendors have safeguarded themselves with a disclaimer that these are only screening tests; they can be challenged in court, so no action should be taken unless the result has been confirmed by an independent technique.

In all laboratories, the first screening is done in this way since 95% of the tests are negative; those which are positive then are confirmed by other methods. Even if cocaine is highly specific all the companies suggest confirming by an alternative technique.

The next step is the confirmation tests by chromatographic procedures (slide 3).

Slide 3

CONFIRMATORY TESTS

Chromatographic procedures

THIN-LAYER Chromatography (TLC)
GAS Chromatography (GC)
LIQUID Chromatography (HPLC)

Gas Chromatography - MASS Spectrometry
(GC-MS)

Ram Gupta *continued*

There are three kinds of chromatographies and techniques. The older one was thin-layer chromatography (TLC). It was not as sensitive or convenient as the present immunoassays are. Gas chromatography was difficult and costly, as is the liquid chromatography, the newer technique. For legal purposes, the last technique which is the combination of gas chromatography and mass spectometry, is the technique required for confirmatory tests. If I say I have tested cocaine positive by an immunoassay and confirmed by a TLC, the court may throw out the case. If I say I have found positive by an immunoassay and confirmed by gas chromatography-mass spectometry (GC-MS) the defence lawyer is helpless. That is the final word, the gold standard. All laboratories performing this service in the US have GC-MS.

GC-MSs are more sensitive. If we find a positive test by screening with a cut-off point of 100 ng/ml for cannabis, we would always pick it up by GC-MS. If we have reported a negative because it was less than 100 ng/ml, analysis by GC-MS may find more positives than that. We decide at what level we want to test and can make the immunoassay more sensitive so gas chromatography-mass spectometry matches the sensitivity of immunoassay. TLC may not match it. Gas chromatography by itself may not match it but gas chromatography-mass spectometry will match it. Do we ever find negative confirmatory tests if we find a positive cannabis or cocaine test? For cannabis and cocaine, the positive confirmatory tests are nearly 99-100% but for morphine and amphetamine it may be less because immunoassays for those two compounds are not as specific—it may be just codeine which gave a positive test when analyzed by GC-MS to look for morphine and the result would be negative. So positive opiate test by immunoassay may mean anything but by GC-MS it would show that morphine is not there. But to do every test by GC-MS the cost would be very high.

The reagents for immunoassays are also quite costly (slide 4).

Slide 4

COST

Screening test (batch of 10) — $6.00/drug/sample

Confirmatory test — $100.00/drug/sample

90% Negative

Average cost for 3 drugs/sample — $35.00
(cannabis, cocaine, morphine)

Ram Gupta *continued*

If we want to do one test at a time, the cost is far too high. If we do ten samples in a batch, it will cost us $6 per drug per sample just to screen them. If we confine our screening to three drugs, the cost would be $18.

If we buy a gas chromatograph-mass spectrometre and hire technologists to run it, the cost per assay would be $100. Since 95% of them are negative, we don't have to confirm all of them, so the average cost of processing one sample would be about $35.

Cost is a very important point. We have to question whether that much money spent on that analysis can be better utilized to rehabilitate those whose performance problems can be detected without doing costly analyses.

What do we mean by validity? (slide 5)

Slide 5

ANALYTICAL VALIDITY

False negatives — Limit of detection

False positives

Choice of laboratory — Quality control protocol

- Sample mix-up
- Transcription error

We want the result to be true. That is, it should not give a positive if a worker hasn't taken the drug; it should not give a negative if a pilot has taken the drug. Both are dangerous situations. If a pilot is on drugs and our sensitivity is poor and he is flying a plane after we have given a clean bill of health on drug presence, that is dangerous. If we give a positive result on a steelworker who hasn't taken the drug and he loses his job, that's dangerous too.

The technology is so good these days one can extend the sensitivity to one nanogram per ml of the analyte. Do we want that? What does that mean? If we smoked one marijuana cigarette, it could be detected for thirty days depending on what limit you want to set. We do not want to use that level of sensitivity. Now, we detect marijuana only up to 100 nanogram which is the detection limit for three or four days after smoking a marijuana cigarette. In the period after that there is no physiological or pharmacological effect of the drug and there should not be any effect on performance. The sensitivity should match our objectives.

Ram Gupta *continued*

With all the criteria I have already mentioned one can be sure of the results if one has made a wise choice of the laboratory where those tests are performed. How do they do them? How do they check their results? Are they contributing to some quality control scheme? Is there a national or international quality control scheme in which they are participating? Before contracting a company's drug screening program to that laboratory, one should visit to check out answers to these questions.

There are other possibilities of errors which are unavoidable. One is sample mix-up. In a big company employing thousands of workers, you might take 50 samples a day, and one secretary is labelling the samples. If there is a mix-up in the labels, the results would be wrong. Someone who hasn't taken the drug may test positive and another who has will show a negative result. In our clinical laboratories we get hundreds of samples from patients, and the names are mixed up many times. We have taken all precautions, computers, everything possible, but still some errors are unavoidable.

There are non-laboratory factors (slide 6).

Slide 6

NON-LABORATORY FACTORS

- Doctored sample
- Altered metabolism/excretion
- Time gap between ingestion and sample collection
- Health foods — poppy seeds

One is doctored samples. Up to a few years ago, when the only technique was the second one I mentioned, Emit (Syva), those workers who were taking the drugs knew that if, when they were giving the urine they put detergent in it, the assay wouldn't work.

The alternative test of the competitor, Roche Products, was not subject to errors because of doctored samples, and the company made much headway of that in its marketing and became successful.

All these assays are based, particularly GC-MS, on identifying one compound. Take cocaine; in the urine there is no cocaine, there is a metabolite called benzoylecgonine. For some reason, in a biological system, the metabolism in an individual may change. Cocaine is there but instead of becoming benzoylecgonine, it remains as cocaine. When they want to test by GC-MS, they are just testing for benzoylecgonine; the result would be reported

Ram Gupta *continued*

negative because there is no benzoylecgonine, there is only cocaine. In some individuals this altered metabolism can take place.

We can detect cocaine in an individual up to two days; but if a small dose of cocaine was taken one week before, one may not be able to test that. We may not be able to identify an occasional user if there has been a big gap between the sample taken and the ingestion of the drug.

Unintentionally, people are taking health foods which can give positive results. Many health food products are available which can mimic drugs. There is a cocoa tea available in some countries which has cocoa leaves which contain some cocaine. If you drink too much of that tea, you will test positive for cocaine. Similarly, there are poppy cookies made with poppy seeds. They have not only morphine but many other opiate alkaloids. When we apply the screening test it would be positive and confirmed even with GC-MS. One has to be aware.

These products are not illegal, but tests give positive results for illegal drugs because those foods contain small amounts of those drugs which have been banned. Tests make no distinction.

In conclusion, technology has advanced to such an extent that to do proper and accurate testing is not difficult. The question still remains whether doing these tests is of any use and worth the cost to society or not. Thank you.

Sandy Chapnik

I forgot to tell Lillian, I am a Vice Chairman of the Workers' Compensation Appeals Tribunal; some of you may have some interest in the Board or the Tribunal.

Times have changed and lawyers are working with people in the public sector to attempt to work out what is the best thing for everybody. In this particular matter of drug testing, we did form a committee of the Canadian Bar Association which has a mandate to study all aspects of employment-related drug testing, to assess public health, public relations, legal, ethical, moral aspects of the problem. On the committee are lawyers from American Motors, Ministry of the Attorney General, Ontario Human Rights Commission, doctors, Chief Medical Officers of Health for the Province of Ontario and the City of Toronto, the President of the Addiction Research Foundation and several lawyers and law students who are interested and work for either labour or management. The committee had input from the Department of Correctional Services, Department of National Defence, and Sports Canada. We have had speakers come to speak on these matters

Sandy Chapnik *continued*

from Sports Canada (officials, and an athlete who was discharged on the basis of a positive result) from Air Canada, Ontario Federation of Labour, Canadian Auto Workers, Canadian Civil Liberties Association; it's been a broad spectrum.

I have been asked today to zero in on the legal aspects of drug testing and the human rights aspects. Because there has been no challenge, no real court case, or grievances and arbitrations in regard to drug testing in Canada, you may have different legal opinions, but everybody is basically anticipating what might or could happen if drug testing laws are initiated and if policies and procedures are tested in the courts.

We first look at the US cases and then see why and where Canada is different. Unfortunately, the US cases are very inconsistent. There have been some cases where drug testing has been approved or endorsed by the courts; for example, the Shumacher case, which dealt with the jockey, upheld random testing as being reasonable in the public interest. This appears to be the exception rather than the rule. In the US cases, it must be shown that there is reasonable suspicion of drug taking, that there is a hazard or very dangerous situation, and that it is very much in the public interest to have testing. It is on the basis of a lack of statistics relating to job performance that most of the cases have struck down the drug testing. The testing in those cases has been deemed to be an unreasonable search and seizure.

There are different state and legislative provisions in the US. In San Francisco, they recently amended their municipal code to prohibit employer drug testing of employees on the basis of their right to privacy. The amendment basically states that it is a public policy of the City and the County of San Francisco that all citizens enjoy the full benefit of the right to privacy in the workplace guaranteed by Article 1 of the California constitution. They have anti-discriminatory laws there. "It is the purpose of this article to protect employees against unreasonable inquiry in an investigation into off-the-job conduct, associations and activities not directly related to the performance of the job responsibilities." That is in their constitution at this time.

Other states have initiated other kinds of policies and procedures and in their statutes have set up procedures whereby they can have drug testing under certain conditions; however, there is always a penalty clause where any employer who violates the section is guilty of a misdemeanour punishable by fine or whatever. The US cases are inconsistent so we do not glean too much from them.

In Canada, we have the Charter of Rights and Freedoms, but it does not help in private situations. The courts have held that the

Sandy Chapnik *continued*

Charter of Rights and Freedoms only governs relationships between the government and individuals, and not between individuals or a private employer in industry and his employees. You cannot really use the Charter in individual private situations. You can if there is a government regulation or even a government policy, for example, in the Ontario Racing Commission case where they have agreed on an interim injunction of the testing until the case is heard.

Another problem with our courts is the length of time it takes to be properly litigated, especially when you go through the appeal procedure. In the meantime, a lot of things can happen. We have to look at it before drug testing gets to that stage. The Charter guarantees life, liberty and security of the person in section 7, protection against unreasonable search and seizure in Section 8, and protection against self-incrimination in section 13. There is an overriding clause that says that if something is reasonable and justified in a free and democratic society, then it overrides some of the other sections. That can only be used in very limited situations.

If the Charter applies, basically the search and seizure is the section, Section 8, which people will rely on and will hope to strike down a provision on the basis of unreasonable search and seizure. There are conflicting cases even with blood samples and breathalyzer tests where search and seizure has been shown to be unreasonable because the party did not consent even though there was evidence of impairment. That is the section people will try to hang their hat on, I think.

Other than the Charter there is a large body of common law, privacy, rights to privacy, trespass, assault to the person, wrongful dismissal, damage cases that employers will have to look at if they are intending or are implementing policies which may be challenged by an employee. An individual can rely on the Ontario or Federal Human Rights Code as well as the Occupational Health and Safety Act. Generally, the Ontario and Canadian Human Rights Codes have provisions which deal with drug testing in some way.

Under the Ontario Human Rights Code, section 4(1) of the statute prevents a person from being discriminated against with respect to employment opportunities because of handicap and under section 9(b) of the statute, "because of handicap" means for the reason the person has had or is believed to have had any degree of physical infirmity that is caused by illness. In the past, many arbitrators have generally treated alcoholism as a disease or an illness and if drug abuse is seen as comparable to an illness that results in a degree of physical infirmity, it may be argued that it is a handicap, therefore, that the person is entitled to protection under section 41 of the statute. The statute does require the employee, although

Sandy Chapnik *continued*

s/he has a handicap, to be capable of performing the essential duties and requirements of the position before being permitted to work.

There has emerged in the Ontario Human Rights Code a duty on the employer based on reasonable accommodation; that is, up to the point of "undue hardship" the employer has a duty to reasonably accommodate the person who is under the handicap; this may means a duty to provide a rehabilitative program or counselling as an alternative to having an employee refused or terminated from employment, or perhaps a duty to provide a lesser type of job that the employee can do. This is all regulated by the code.

The Ontario Human Rights Commission has said that it is not in agreement with pre-employment testing which is against the provision of the Code, simply because people do not have the protection of a contract; moreover, employers cannot relate the drugs to job performance because they haven't even let them have the job so there is no performance deficit to justify the testing. Unless there is an offer of employment, people cannot be tested. This does not stop an employer from making a conditional offer, subject to the drug test, but then, the duties of reasonable accommodation, and so on, would apply.

In the courts, there would be an onus on the employer to show that the testing was justified and reasonable and to show what the procedures were and how set up, how there was foreknowledge of the policy, how there was a public hazard and how there was suspicion of drug taking in any particular case. It is quite a heavy onus. In union contracts, this has been litigated in the States, and I am sure the same thing will happen here—that the employer cannot unilaterally change the terms and conditions of the contract. It may be something that is either negotiated in new contracts or not done at all; it cannot be unilaterally initiated by the employer (or this would be subject to a grievance procedure).

These are all the legal principles that will have to be seriously considered before drug testing is put in place. It will take a few years for this issue to be properly litigated so I think that in anticipation, the statutory laws and the result of any litigation should be looked at very carefully in advance. In looking at that, one also has to examine the Labour Code and the Occupational Health and Safety Act and the fact that the employer has a duty to ensure that work is done in a safe and healthful manner and that no worker operate and use equipment that may endanger him/herself or another worker.

This brings us into the social aspects rather than just the legal and human rights aspects of drug testing. What are the alternatives

Sandy Chapnik *continued*

and the social norms that the company must consider? We must look at a broader picture of drug testing—the education and rehabilitation programs that may confront and deal with the problem of drug abuse in a different way.

Dr Gupta has talked about other things that will change the test results or may make a difference to test results. There are so many other factors in society that could be addressed when dealing with job performance: stress at home, taking antihistamines or prescription drugs; these things should be part of an overall plan of an employer rather than just dealing with the drug testing, looking at the result and saying "What do we do now? What do we do with it?" The social aspects should be carefully considered and documented before any drug testing procedures are implemented in companies.

Hank Gauthier

When we talk about drugs and alcohol we have a tendency to think that that is the drug and alcohol problem. The focus should be on the source of the problem. I do not think that drugs and alcohol are the problem, but the symptoms of the problem. We ought to take a look in society. I would like the panel to discuss the societal pressures, the family relationships, what is going on in society that causes these things. Job alienation for instance; the classic one, the question of auto workers on assembly lines. They had EAP programs long before many other unions did for the simple reason they had a drug scene, and that the workers were being alienated. These are the kind of factors that lead to people resorting to doing things with their lives and with their bodies such as drug and alcohol. Some focus and attention has to be placed on what are the root causes and if we go to drug testing, what will it resolve?

Sandy Chapnik

It is a complex question. There are many factors that will lead a person to taking drugs. If you can deal with the factors rather than the result, then you are doing a service for your company and for society. After the fact, if you do know or suspect that somebody has this problem, how can you help overcome it? Companies should be looking before and after to provide a healthy work environment; you might want to deal with factors other than drugs which is a very narrow spectrum.

Ram Gupta

I would agree with you. There are choices. If a worker is making hamburgers, it doesn't much matter if s/he is intoxicated with cannabis or alcohol. Whereas when another person is flying a plane

Ram Gupta *continued*

or is manning a gun on a ship or any other very alert situation, it does. If it could be proven that merely testing in those occupations, where every moment is crucial, could deter a person from impairing performance, the case could be made for drug testing. But for other industries, your approach of assisting the employees for the overall picture of their environment at home and work might be more beneficial.

Gordon Atherley

If I understood your question, Hank, what do we do about the root causes of the problem which lead people into drug and alcohol excess or abuse and what good does testing do for those wider problems?

Hank Gauthier

Yes. May I also add a comment to the doctor's statement on regulating the intake of drugs in the workplace. Really are you not regulating the usage of drugs? When people find out that after 30 days, cannabis does not show up any more and they have just had their test, they can say "I am scott free now for about 6 months until the next test. I will be able to use it on that basis." If it's cocaine which disappears in 48 hours, I can say I just had my test I am practically free for the next year now. Are we not regulating the usage?

Lillian Vine

A question was asked as to how people were invited to the workshop and who was invited. The people who were invited were senior managers and labour leaders, and occupational physicians, in automotive, chemical, laboratory and transportation industries. We invited only a few more people than are here. Invited were the experts. There are two experts on two particular topics on the platform now. The people who are going to have to deal with a lot of these questions, which are very hard to answer, are you—for you are the experts. That's why you were brought together. Some of the questions you are posing, Hank, while they may not have been answered by the end of the workshop will certainly have been addressed.

Ram Gupta

A person who can stay clean for six months, is not addicted. If one can avoid taking cocaine for a week, then the problem of addiction isn't there. The problem is that those who are addicted cannot remain without the drug for that length of time. The analysis in such a situation would be so random that they would not know

Ram Gupta *continued*

when they would be asked. It is possible that every time a pilot is going to take off, he may be tested. I cannot even estimate the cost of such a program. In such high-risk, high responsibility positions, testing could be of benefit, but a lot of money would be spent. Both of these compounds (cannabis and cocaine) are so addictive, it is beyond the control of the individual to regulate intake.

Tony Hammer

When employers wish to hire someone, they are entitled under common law to rank the job candidates. On the basis of some pretty subjective impressions and tests, they can base a decision on who they hire. Under the Ontario Human Rights Commission, they are not allowed to discriminate against the disabled, they are obliged to do everything they can to accommodate the disabled and to regard those who have a drug problem as being disabled. Why could not an employer look on a drug problem as part of the capacity to do the job, as being one of the potentially minor influences which means someone else gets the job, and the drug user doesn't? Why can't we interpret it in the capacity of ability to do the job safely?

Sandy Chapnik

I think what the Human Rights Commission feels in this case is that you are dealing with a pretty defenseless person, given the unreliability of testing, and given the fact that s/he has no union protection and given the cost of litigation should there be a grievance because s/he is not hired and there is no relation to job performance. This may be a very good employee and do a good job as well as anybody else. It depends on what we are talking about. It is very hard to draw the line when you are dealing with the public safety jobs, such as pilots; you look at a company like Air Canada and see that they are testing everybody at Air Canada, the clerks, the people at the ticket counters, the porters. Where do you draw the line? When you are offering somebody a position as an airline pilot versus a porter, you may want to look at those criteria. In any event, the Ontario Human Rights Commission has said unconditionally that pre-employment testing is not justified because you are dealing with a private individual who does not have any basis to be subjected to this intrusion of personal privacy until there is a job offer. Once all the other conditions of employment are satisfied, whether there is a union or contract, will indicate where you go from there.

Tony Hammer

What you are doing is conferring status on people who have jobs as though they can only defend their human rights if they have the status of employee or union member to protect them. I don't think there is much grounds for pre-employment drug testing, but it is a specious argument to say it should not be done because they can't protect themselves. Throughout society there are lots of other people who cannot fully exercise their human rights, in a broad sense, and are disadvantaged because they don't have an income, job or union to defend them

Sandy Chapnik

I think it's a ' alancing of private rights versus employer's rights. There is a qu. tion of privacy and intrusion of that privacy, given that if the test is properly supervised going into the toilet with somebody else is a highly intrusive scene. There are ways to get around testing; as previously mentioned, if you know you are going for an interview you may not take any drugs for X number of months, weeks or days. And basically, it is a matter of those competing rights; that is what the Commission is saying, it is not worth the invasion of privacy for pre-employment screening.

Reg Basken

A lot is being said about the question of protection in employment or pre-employment testing; there is no one to protect you except some nebulous possibility of law and human rights. There isn't a lot more when you get into the workplace because the choice is an impossible one.

For example, an oil company called a person in on overtime. When he reached the plant, 200 miles up the Alaska highway, the supervisor met him at the gate, put him in a van, drove him into Edmonton and said, "You are going into Calgary for a blood test." He said, "Can I refuse?" The supervisor said, "Certainly." "What will happen to me if I refuse?" "We will fire you for other reasons. The drug testing won't be involved in it."

We have a grievance going on it. The individual does not want to carry the grievance very far. The test proved negative, or at least we suspect it did because the company never reported the results to anyone, and the employee is still working. They flew him to Calgary for one blood test and urine test and two hours in the hospital. He returned home with the stigma of a drug problem. The feeling that the employee has is that his best bet now is to find another job; he has no future there. He had no choice, or that silly choice of—yes, you can refuse, but you will be fired for other reasons. That is one aspect of whether we can provide protection. Is there any possibility of protection if an employer

Reg Basken *continued*

has the right to say you are taking a test because you have been randomly selected, even if there is probable cause?

The theory that I have is that Ronald Reagan decided that there was a problem of drugs in society and he had a budget problem and said "I have to cut my costs in public drug administration; I am now going to call in the shakers and movers of industry and say it is your problem to help me in this social question; please do something in the workplace because you have more control there than I have in society. I am going to cut my budget but I am going to help you out in a number of ways if you will take on the problem of drug testing in the workplace and see if we can handle the social cause that way."

Is that not part of the initiative? Aren't we looking at trying to solve a social problem in the world of work where there is greater control by the employer? Employers are blindly following it. In my experiences in the companies I deal with that are multi-national, the first companies that jumped to the cause of random testing, universal testing, mandatory testing, were the multi-nationals based in Washington, Chicago, Houston and New York that are very clearly in their policy in the US following Ronald Reagan's directive. Aren't we dealing in that aspect with a social situation that has proven itself?

You have in your material a stack of information on mandatory drug testing and random drug testing. I have a film here you may want to see that will show that some of the experts now say that even that problem is on the decline as things fluctuate back and forth.

Sandy Chapnik

There are cases in Ontario, the Ontario Racing Commission, for example, where the exercise riders were challenging the drug testing policy. The person who was leading the challenge had been working there for 19 years, did a good job, supposedly was a model employee, never had a problem with work performance and simply refused to take the test. Built into a lot of these policies, is that a refusal means a bad result and the employer does not have to have a reason to justify termination if you refuse to take the test.

As far as the US is concerned, we will never get out from under that one. American Motors and other subsidiaries of a parent company, have to follow the line of the US parent. Canada is different with different laws. We have different problems, different degrees. I am not sure if the Canadian courts would uphold even what the US courts may uphold, and then there are inconsistent results in the US as well.

Reg Basken

Even if the courts do uphold it, the chances of our getting many cases there are relatively slim because the pressure on the person in the world of work is such that s/he might better get another job because his/her future is dead in that company anyway. The challenge in this area is so difficult, with so much pressure and weight on the worker's shoulders that it is highly unlikely even to get to a court. In the OCAW in the US, in every single drug testing question taken to arbitration or the labour boards, the union has won on behalf of the individual; yet, they have taken less than one-half of one percent of the cases because the others were solved in another way, either by dismissal for coming late or another reason, or by workers quitting because their future in that company was dead. Even though the protection may be there, it is so difficult as to be almost impossible to get to it.

Gus Callaghan

One aspect that concerns me is the social reason for the use of drugs. This is nothing new in society; it is an old problem. Go back 5,000 or 10,000 years, in China, opium was the order of the day. In Judge Foisy's inquiry into the Hinton incident, he said there was alcohol, but that lack of proper rest, lack of proper scheduling caused the workers to fall asleep on the job. These are conditions and a social situation that can be regulated by the industry and unions. The unions will take up the challenge.

Our organization categorically does not believe in mandatory drug testing at all. We believe in the approach that if there is a demonstrable situation of poor performance, the company should perhaps have a program jointly with the labour union such as the one in the CNR for alcohol which is now moving into drugs. But I am concerned about the millions of people who are not in the labour movement who perhaps have nothing to fall back on when somebody "gives them a urine test". People don't drink because there is no reason for it. People don't smoke because there is no reason for it. There are reasons. Why spend millions of dollars on testing? Drugs now seem to be a problem. Alcohol was a far worse problem in my view for hundreds of years, and drugs for perhaps thousands of years. All of a sudden there seems to be a great surge in the US and Canada for testing. Yet very few resources are spent on researching the root causes.

Ram Gupta

I agree. Perhaps drugs were required right from the dawn of civilization after a farmer went home and relaxed and could smoke. It's an irony. We are becoming faster; we travel fast. On the other hand, we are regulating our society to get rid of those habits. The fear is about the effect of those compounds on others. 5,000 years

Ram Gupta *continued*

ago, my taking alcohol or drugs didn't matter to others because I was using only an ox to plow my field; I didn't use a high-powered tractor which I could run into other people working in another field. How my use of alcohol or drugs is going to affect others is the question in the military and in industry where my impaired performance could affect the lives of others. That is a justification for testing.

Testing has been erroneously taken up by industries in the belief that it might improve their performance; that there would be fewer sick days, fewer claims of benefits, and that there would be more discipline, more productivity. There is no scientific study to back that up.

Gordon Atherley

There seems to be a distinction being drawn between those people whose work put others at risk if they make an error and those whose work does not put others at risk. You are saying that people in the transport industry, whether aviation or railroads, seem to be in a different situation than those who do clerical work without the prospect of endangering anybody if something goes wrong. Are we resorting more to chemicals for some reason in society, is it the stress, the nature of people's work, that causes the problem to emerge or some other factors?

Sandy Chapnik

There may be a case, it appears from the US cases, for drug testing in high risk hazardous occupations where there is danger generally to public safety. The problem is defining those words. Public safety, danger or hazard and so on.

In a company like Air Canada even within the company, where do you draw the line, the people who manufacture the parts for the airplane, the people who put it together? It's a very complex question. Even within one industry, you have to be able to define your terms reasonably and clearly so that they are well defined and everybody knows where the line is drawn.

The question is where there are no statistics, where you cannot show that there is danger to the public, even in those high-risk industries, where you cannot show there are other means that will be just as acceptable and the result will be the same or better for the public and the company, I am not sure you can justify the intrusion to the person. For example, if there is vigorous educational component for airline pilots, if there are other means as there have been in regard to alcohol for many years, where

Sandy Chapnik *continued*

there has been a policy in place and people know what the results are and what the consequences are going to be of being impaired.

There may be other ways to handle the situation other than massive drug screening. In Quebec, the Superior Court case involving the correctional institute (there is apparently a problem of drugs in prisons and unfortunately it is not too much of a precedent because when the court struck down the provision, they said that it was too generalistic) the provision provided for random drug testing on a generalized basis of inmates and there was no reasonable suspicion of having taken drugs necessary. Also, there was no limit such as in the impaired driving charge where you have .08 limit of alcohol, there was nothing stated that said over a certain level of drug in the body meant impairment. The court said that it was not reasonable and justified to test prisoners on a broad scale. When you talk about high risk, where do you draw the line? It is a difficult line to draw.

Gordon Atherley

Why is the problem coming to the surface? Is it just the question of safety or are there other factors like stress that are encouraging people to turn to alcohol, drugs by way of relief?

Sandy Chapnik

You are looking at long working hours, and especially in the aviation, transportation field sometimes very long working hours with people under a lot of pressure. If you can deal with those sources and those social problems in a more humane and broad way, you may be able to deal with the root of the problem rather than the effects.

Linda Wilcott

We are talking about conditions of work and stress in the workplace. Has any discussion taken place around the hazardous substances that workers either ingest or inhale or are exposed to in the workplaces? Is there an impact on the testing of those other things? We have to look at the conditions as well as the substances that workers are subjected to.

Gordon Atherley

One of the parts of the question is whether I am inhaling some chemicals, say solvents, at work which could show up as positive result in these tests.

Ram Gupta

As I mentioned before, we are testing for specific drugs not for the condition of the worker, such as drowsiness or sleepiness; so those inhalants won't make those test results positive. They are specific.

Are the workplaces doing something about making the place safer? The law says that they have to. We have in our laboratory; we used to use benzene but no longer. We monitor how much of solvents people are being exposed to. People are aware of the harmful effects. We have a safety committee which comes every month to check if we violate any rules or expose our workers to excessive chemicals or if any hazardous things are lying in their way. People are becoming aware of these workplace hazards because legislation is demanding it; there are heavy fines for not doing so.

Linda Wilcott

The focus is on the workers and their problems. The issues that we talk about should also look at the responsibility of the employers. It is a two-way street.

Film started

Reg Basken

The Oil, Chemical and Atomic Workers (OCAW) is my former union so I have a vested interest in promoting them but I don't agree with the position that the OCAW takes in the film. The medical and industrial people that have been consulted in the making of the film have opinions that are important to this particular group. I commend it to you for the expert opinions, not for the political viability of the OCAW or the political position that the OCAW has taken with respect to negotiating mandatory drug testing. The experts in the film are identified and if you need further information on them, OCAW will give it to me without question. I commend the film to you for your information and its expert opinion on the subject of this workshop and not for the political viability of the OCAW.

Day 2

Lillian Vine

On December 3, 1987, the Centre will be holding a Conference on Drug Testing in the Workplace as one outcome of this workshop. Several of you have said you are interested; we will certainly send you publicity.

The proceedings of this workshop will be transcribed, reviewed and printed as quickly as possible.

Reaction panel

- **Dr. John Kirkbride,** Director, Occupational Health Unit, Medical Services Branch, Health and Welfare Canada
- **Hon Martin O'Connell,** Chairman of the Council of Governors, Canadian Centre for Occupational Health and Safety

Group 1 Labour

Jack Soutendam

On behalf of labour, I would like to thank the organizers for the opportunity to deal with this particular issue. We appreciate it and look forward to the December conference. Reg Basken will be rapporteur for our group.

Reg Basken

I want to explain the labour position clearly. We did not go through the questions again today as we had gone through them yesterday. The distribution of individuals and groupings within the three groups was sufficient to ensure there was labour, managerial, and medical contact in each group. Some of the opinions we express now will have already been expressed in yesterday's groups.

From the labour point of view, although we recognize that there are drugs and the possibility and potential for a drug problem in the workplace, we see that testing will not provide benefits for the company or the workforce. On that basis, we oppose testing—random, pre-employment, and mandatory.

Testing only gives you the information that a certain drug may be present in a person; it doesn't present any evidence as to when that drug appeared, how it appeared, or whether there is a problem as a result of its appearance. Drug testing is a simplistic approach to attempt to deal with the drug problem while it does not even identify that problem. It doesn't identify the problem either in the social or the workplace sense. It does not take into consideration stresses of the workplace and other situations in the world of work

Reg Basken *continued*

that may have been the root cause of a problem of which drug use is a symptom.

Testing itself does not measure impairment or performance; nor does it ensure safety. On that basis, we should, as a society, object to drug testing as a supposed way of doing anything useful in the workplace either for workers or for the corporations or for society as a whole. When you look at drug testing, what it is supposed to provide, and what it will provide, you conclude that there are many people who want to do something about the drug problem in society; you also conclude that if there is a drug problem in the workplace, everybody is searching for an answer to it. Some of that answer may appear to be in drug testing, and the search does not go any further than that.

The essence of our position is that if there is a drug problem in the workplace, and we concede that in some places there is, all of the normal labour relations processes, management functions and responsibilities, union relationships and processes, education, rehabilitation (including employee assistance programs, union counselling) currently in place can be used to deal with the problem. We can logically deal with the question of testing by saying, "No, it does not provide any of the things that it appeared to promise when some people said that drug testing would be useful".

I invite other members of the labour group to comment because there was no unanimity that this was all we should say nor that it was good enough to answer all the questions that we posed by saying "No" to a program that has a lot of public sympathy, albeit public sympathy with a great deal of misunderstanding.

The question of data only comes up on some of the arguments with respect to accuracy of testing. We have that. With respect to focussing on a problem, we felt that the mere presence of a test that reads positive, meaning there is a drug in this person's system, adds nothing. We do not have statistics to say that there is anything you can gain out of that. Common sense tells you that just because a drug is present does not indicate how it got there, what effect it has had, whether it affected the performance of the worker, if it is an addictive problem or the use of an inhalant for a cold. Nor does it necessarily indicate abuse.

If there is a drug present, but no evidence of abuse, is it anybody's business? Are we going to redesign the workplace as the conscience of society? We do not think that any type of testing, no matter how extensive or complete, would ever in itself provide anything that cannot already be provided under the normal questions about performance at work. Is it the employer's responsibility to see that the employee's performance is up to reasonable standards? Yes.

Reg Basken *continued*

If the performance is falling short, if there is an absenteeism or tardiness question, all of those are currently handled. If drug use is identified, then there are employee assistance programs and union counselling to handle those. Statistics will not come from testing but from the realities of dealing with those issues in the workplace.

John Kirkbride

If a trucking company had introduced this sort of program, say three years ago, and the accident rate had gone down in those three years, would you make those same conclusions?

Reg Basken

We would likely have a great deal more difficulty making those same conclusions, but I would still make the conclusion that it was not necessarily a result of testing; it was a result of diligence in looking after the issues in the world of work. If you say we are going to test everybody, there will be an immediate reaction in two ways. One, a lot of people will be more careful and two, a lot of people will find devious methods to get around the test.

Although hypothetical questions should not be answered, I think that if you announce a program in this room to test if you smoke, there will be a lot of people finding new methods of handling their tobacco addiction. For a period of time, people would even claim to have quit, then start to cheat and lie a little, say they are cutting down, that they quit 4 times. We have not seen a drug testing program that in itself made that kind of super decline. We do not know that one has existed. If it did exist, my guess is that it would be of a short-term nature unless there was corresponding diligence in the workplace. We say that there should be diligence in the workplace, but that testing is an unnecessary invasion of privacy to try to accomplish what we want to accomplish.

Jack Soutendam

I am not deviating from the views presented by the rapporteur of this group, but the Canadian Air Line Pilots Association, CALPA, which I represent, in November 1986 developed a position on mandatory drug testing which I will read to you. The position is firmly in place.

"CALPA opposes the testing of flight crew members for illegal drugs. When drug testing is part of the existing airline pilot health and rehabilitation program, the Canadian Air Line Pilots Association would support such a drug testing program provided the most stringent testing safeguards are jointly agreed to and the

Jack Soutendam *continued*

drug testing program is mutually operated by the CALPA and respective employers."

I would like to briefly comment on the hypothetical question that was asked earlier. Since drug testing was initiated for a particular group, in this case the operators of highway vehicles, the safety record improved, the accident rate decreased. I would like to suggest that it would be very difficult, unless we determined exactly what the cause of the deterioration of the safety record was, whether the drug testing program per se affected it positively or negatively. It is absolutely essential that the performance of the individual be tested against the ingestion and presence of a specific drug. That would be difficult to do. I doubt that in any professional organization, whether in vehicle testing, ship testing or aircraft testing, it in fact has been done to the extent that we can accept drug testing findings. Until that is in place, there is no question of the position that the workforce must take. This is not a comment on the validity of the testing because, as indicated earlier by Dr Gupta, it is essentially valid to an acceptable degree. Unless some substantive evidence is presented that stands up in court regarding the performance decrement as a function of drug ingestion, drug testing is an unacceptable program.

John Kirkbride

I am sure one problem each group wrestled with was absence of data. I happen to have some data here. This is confidential data. It is a very large transportation industry in the southern US. They introduced a testing program in 1984. They categorized accidents and incidents together. I do not have their definition of accident or incident. In 1983, 911 accidents and incidents; 1984, 449; 1985, 295; 1986, 168. In the first two months of this year, 6.

The data do not answer any of the questions both of you have raised because we see a trend in accidents and incidents at the same time that a program was introduced when there were a million other things happening in the workplace too. There is no question of cause and effect. But those are the only data I have which you may not have seen.

Reg Basken

In that particular circumstance, my guess is that every single thing that was accomplished in those four years could have been accomplished without testing by diligence in the other programs that are there—by simple management responsibility, trade union cooperation, understanding, working on a program. Testing was only the catalyst, but now it will serve as justification for a testing program because it appears to have worked in one circumstance.

Reg Basken *continued*

Take testing totally away from that and use the regular procedures of making sure you investigate accidents, their causes and all things in the workplace that go with them, and you may get the same result. It may be more difficult to investigate each truck driver because you do not see them all the time; but generally you know the abusers, the people in the workplace know the abusers, without a testing program. It is a matter of how we deal with it. We have used the testing program as an excuse by saying, "We took a test and now we've got you." The punitive threat is enough to make a difference in the first few years. We say it is an unfair punitive threat.

Neil Johnston

I get very nervous when I hear people quote from before/after data to justify major interventions in people's lives, whether health interventions or any others. The three questions I would like to see addressed to that data on the way those studies were carried out are: (1) How accidents and incidents were classified before the cut off date and afterwards, because there is a tendency for people to report or not report what they think people want to hear. (2) How the actual reporting mechanism took place, was there an independent audit, in-house or external? (3) You did not mention what kind of drugs. There is a common thread in this discussion. If we ignore alcohol, which must represent 80% of the problem, I find it hard to believe that a drug testing program would cause a reduction in incidents that extreme without addressing the issue of alcohol.

John Kirkbride

I do not want to dwell on those figures, I can't defend them and I can't answer your questions. The drugs did include alcohol, it was one of the drugs tested for. This was not a controlled study and I can't respond to the other point.

Reg Basken

A number of years ago when I was in the Oil, Chemical and Atomic Workers International Union, we had a big strike with Shell Oil over health and safety issues. The issue was the right to have a health and safety committee. We predicted that the industry would find that accidents increased when we had a health and safety committee; we did it to protect our own butt because we knew if there was a health and safety committee it would report most accidents. There was a dramatic increase. We were fortunate that we were able to say that publicly in advance. If you do anything significant in the workplace, saying I am going to check you or I am watching you, people will react and sometimes tell you the

Reg Basken *continued*

things that they think you want to hear. The numbers of accidents increased once we had a health and safety committee only because people were reporting them, not because there were more of them.

Jack Soutendam

Whenever we have a man/machine interfacing situation, with a complex piece of equipment such as a vehicle and a human operator, a decision on the strengths of provided data should take into account that in that period of time the knowledge of human factors activity increased. We now know what we didn't know then, about what people can or cannot do. The equipment itself has significantly been improved in monitoring or in providing activities that the operator does not have to provide anymore.

The issue is so complex that I am very uncomfortable with the simplified decision or reading. I have not read the report but I would like to. I suspect I will not change my view on it. I do not know who investigates the accidents and incidents in the US; I presume it is a central body such as the NTSB responsible for it. I would like to suggest to the panel that the quality of the investigation in the US, in accidents in road service and air, as provided by the NTSB which is an independent agency, has been subject to much question; to the point that within the past year the human factors cell in the NTSB has been strengthened by bringing expertise into it from the NASA group to prevent this kind of reporting. I am thoroughly uncomfortable with it. I do not believe that any government agency with any legislative authority should take data like that at face value because the complexities of the man/machine interfacing are really extensive.

Peggy Nash

I would like to draw attention to a program where we have documented results; if people want further information I would be happy to supply it; that is a program on substance abuse that the Canadian Auto Workers have negotiated with American Motors Corporation in Canada; it relies on a non-punitive approach to drug and alcohol abuse. We have documented an 85% success rate through this program. We found it successful in identifying and dealing with substance abuse problems on the job without resorting to invasion of rights and privacy that a drug testing program would require.

I do not feel that this is truly a health and safety issue, it is an issue about employer control over the workplace. We have for many years gone to the bargaining table or the legislature in an effort to improve health and safety conditions in the workplace; companies have not just given us good health and safety provisions

Peggy Nash *continued*

in our contracts, they have not just agreed voluntarily to improve working conditions to make the workplace safer; we had to fight. On the right-to-know legislation in Ontario that Dr Atherley was referring to, it wasn't the employers who were in favour of that. The Canadian Manufacturers' Association opposed right-to-know legislation which would give workers the right to find out what chemicals they were being exposed to in the workplace. Giving employers the right to know what's inside workers' bodies gives them unrealistic power and does nothing to improve working conditions.

Group 3
Management

Neil Johnston

Although I chaired and am reporting for the management group, I do not consider myself to be a representative of management in the context that you probably understand it.

From a philosophical point of view, I have enormous problems with this issue. I feel that decisions concerning things as important as drug testing should not be made in an atmosphere of moral panic. That moral panic was referred to in one of the pieces of information which you have in your folders. It adequately describes the atmosphere that this discussion is taking place in, not in this room, but at the national level.

In general, in all the discussions in which I have taken part in the last few days, there has been a remarkable congruence of views (particularly with reference to the development of Employee Assistance Programs), which is impressive to me as I have not taken part in these kinds of discussions before. The other general view is that any application of testing for substances must be for the health and welfare of employees, not as a device to satisfy external political pressures.

These are our conclusions:

Pre-employment Testing - Testing for drugs may be part of a pre-employment medical examination provided that the testing is conducted on the order of and subject to interpretation by a physician and that drug use is related to the ability to perform the duties of the position concerned.

Random Drug Screening - Scientific justification for random drug screening is totally unacceptable. There is none. It is a solution looking for a problem, it is a response to a moral panic. It is completely unclear whether the dimension of drug use by employed groups have been characterized at all. There is no idea what the

Neil Johnston *continued*

size of the problem is or whether it exists. Random drug testing presumes guilt and is as sensible as random medical testing of any kind. The likely effect of random testing of specific employee groups will be the poisoning of labour and management relations.

Ongoing testing - may be conducted if necessary as part of a legislative requirement for continued assessment of medical fitness or part of a collective agreement. Such testing should be conducted as part of a professional medical assessment.

Further recommendations - Joint employee assistance plans able to deal with employee problems whether or not related to drug use are needed. Education of supervisors and employees about health problems which may affect performance should be conducted by employers.

Supervisors should be taught during in-house education programs to recognize performance problems possibly related to drug use. Prior to any legislated encouragement to conduct testing of any kind, there must be a full public hearing and advice must be sought from employers and unions.

Martin O'Connell

I thought I heard Reg Basken comment favourably on the jointness of programs if there are programs, as part of the ongoing joint relationship. Am I right on that?

Reg Basken

I talked about the joint employee assistance programs, union counselling programs and other negotiated labour relations systems under a number of different names, but collective bargaining is one of them.

Martin O'Connell

I didn't hear that from you, Neil, representing the management point of view. Speaking on the responding panel taking the place of government, I think that it would be important for government to know whether the joint approach to problems of this kind is supported by management.

Tom Dyce

It was implied but not emphasized in the presentation that it would be absolutely essential that the program be joint and have a peer referral model where workers in the worksite would act as referral

Tom Dyce *continued*

agents. Both union and management are critical to the success of any constructive efforts in this area.

John Kirkbride

You are saying, if such programs were introduced into an industry, that professional medical input is essential in interpreting results, presumably filing, storing results, maintaining confidentiality.

Neil Johnston

At our discussion this morning, Tom Dyce from Air Canada gave us the benefit of the experience of Air Canada. The drug testing was not seen as being in any way different from any other form of medical assessment; it must be protected by the physician/patient relationship in the same way, with all the safeguards that are implied.

John Kirkbride

There is a problem where somebody whose performance has been questionable, is tested and the results are positive. Wouldn't you have to advise management and thereby breach confidentiality?

Neil Johnston

I don't think you would have to advise them why they were unfit to perform their duties.

John Kirkbride

Wouldn't it be self evident?

Neil Johnston

I don't think it should. Before any employer would implement this kind of program, it would be imperative to satisfy labour that those kinds of protections exist. My own feeling would be that if I were a labour representative I would find it totally unacceptable for that information to be passed to management. I see that such protections can exist and can be implemented. I am sure Air Canada must have handled that already.

Tom Dyce

Give me a hypothetical situation and maybe I will give you a hypothetical answer.

John Kirkbride

The question maybe is not too hypothetical. There are many screening programs in the US. Some of them, not all, are run by medical departments. An employee comes up for routine drug screening and is positive. The physician gets the results and there is a lot of marijuana detected. What does the physician do with that information? Not just sit on it; this employee may be exposing himself or others to risk. Clearly the physician in that context has to advise management. It is then transparently obvious to management that the employee who was tested had an excess of drugs in the system. Physicians are very uncomfortable with this. They see it as the medical confidentiality which is so precious to them being breached. As a physician, I want no part of this program. Group 1 said that if you had such a program, you should keep it away from the occupational health and safety section; I presume for that reason. Put it with personnel or some other part of your organization.

Tom Dyce

You made a presumption that there is routine drug screening. There is none of the employees in Air Canada. There are medical examinations performed under the Ministry of Transport guidelines governing the pilots and for certain employees in occupations at risk. It is not a routine course of action by the physician to deploy a drug test. Where there are reasonable grounds, I suspect they would use their own medical judgment to perform a test to determine the presence of drugs or alcohol. This particular situation has not cropped up at this stage.

Reg Basken

I have a solution to your problem. Don't test. I say that very specifically. Whose business is it, if there is a bunch of marijuana in a person's system if it isn't affecting the person at work? Is the workplace the conscience of society? You are suggesting that if you have tested and you have found marijuana, there is a problem. That's not true. If there is a problem with performance, absenteeism, job-related conditions, then you handle it with the job-related facilities that are there. You keep it away from the medical confidentiality question because you really do not need to test to find that there is a bunch of marijuana; if you have a performance problem, a discipline problem, then you deal with the problem as it affects work. I do not think you can take that one huge step further which says that if we suspect something, we'll test it and when we test it we'll deal with it as if we were responsible for all aspects of societal issues.

That is where the major difficulty comes in on the question of testing because people feel that we have to test. I will read you

Reg Basken *continued*

one paragraph from a nice friendly company which has developed a testing program. If anyone has ever been bamboozled, AMOCO Petroleum has been. They conclude their "Drug testing, one company's experience" bulletin: "with the prevalence of cheap drugs in our society, and the general acceptance of drug testing in industry and government, the question may no longer be why test? But rather can we afford not to test?" This is all over Canada but it is from the Texas city refinery. The presumptions in here are horrid.

Tom Dyce

Tony might cover it off in terms of the role of the physician in industry in the context of employee assistance. Let me cite for you an actual case involving our joint program and coordinators.

There was a person in the worksite who was exhibiting many of the signs of impairment, inability to stand upright or walk straight, and slurred speech. The supervisor monitoring the person's performance concluded that he was not fit just through observation; he had already prejudged the situation and assumed him to be under the influence of some drug. He referred the individual to our medical department. In the old days we might have put him in the back shed until his shift was over and one of his buddies could have taken him home. That is called the spirit of cover-up. Or, in the late '60s early '70s, we probably would have furnished him with a cab ride home and dealt with him in the morning in terms of his work performance and we would have dealt with it on the basis of discipline.

At this stage, because the doctor in question was considered to be not only concerned about health and safety at the worksite but also about an individual's health, the worker was referred to the doctor. That was at 11:00 in the morning. At 3:00 in the afternoon, he was operated on for a brain tumour.

It illustrates the point that you can in supervision at times conclude things, and what you see is not what you've got. You have to have a process in the worksite where professionals are anchored just as you have to have in the worksite people who are trained and knowledgable to assist people obviously in need of help. They don't have to be psychiatrists or physicians to perform a useful role. They most importantly have to be linked to people who are professionally qualified to make an assessment, not to deal with the aspects of discipline; I think that is very important; doctors in our company are not in the position to render any form of disciplinary action other than to hold a person out of service temporarily for the sake of that individual and fellow employees and on grounds of safety or health.

Tom Towler

Testing is a very important employee relations issue and we shouldn't lose sight of it. We are not chasing drug use but abuse; we are chasing problems in the workplace.

Our approach now is simple. We approach it as does Air Canada, setting aside the pilots and their requirements for medicals. If we have an employee that we know beyond a shadow of a doubt has an alcohol problem, we would never address that employee on that basis because s/he won't listen. We come at it on the basis of performance management; that is the only way you can get the attention of people. We agree with what Reg is saying.

When we do all of the proper things and identify there is a problem, our union is every bit as hard-nosed as we are about the obligation of the person. The union is often much more helpful than we are. We have agreed on outside kinds of assistance. There are all kinds of things that affect employees we don't know about or want to know about. I think that is a doctor's role. If it is a medical situation, do not tell us because personally I don't want to know; assist that person.

Where we differ is on our concern about employment of people and whether in fact we can afford or whether we are required to take in all of the world's problems. We are prepared to do whatever is needed with our own employees, to recognize a unique responsibility to our own employees, to rehabilitate them where necessary and spend the money and time to do so and to cooperate very well. But we do not want to take in people who perhaps might be addicted to hard drugs who are merely passing through on the way to a life on long-term disability.

I don't know what the answer to that is. That is a medical question. We are not talking about the morals of mankind but about whether there is impairment. We do hire disabled people, such as those who have cancer in remission. We are not trying to get away with anything. We would have difficulty saying that we would absolutely exclude the option of looking for the kind of drug problems that medically can be established to constitute taking on a liability that is more than unreasonable; a liability that you can't do a lot about except keep paying the bills.

Testing is a medical question that the personnel department isn't going to take on. I don't think that any management people I know would ever condone any kind of testing that was done by anybody but a medical practitioner in confidence. To shift that to anyone else would be a real problem.

Gus Callaghan

If we are dealing with the social malaise that's one thing, but we are not. If there is a drug problem in society in general we can't take the workplace and say this is where we are going to correct it. The doctor pointed out that his profession should not become a party to what I consider a managerial function to observe the performance of employees.

In the CNR, we have a referral service. If an employee shows continuing dereliction of duty by showing up late and not performing well and is missing time because of claims of sickness s/he is sent to the medical clinic. If the medical profession finds nothing wrong they refer to a counsellor who will then interview the individual, and if there are certain indications of a problem with alcohol, will recommend a program which is laid out and agreed with the union.

To put everybody through urinalysis could cause the greatest disruption in labour relations that you could anticipate, for obvious reasons. I think it is totally unacceptable in society and we in the labour movement say it is not necessary; management has the tools and in many cases where there are unions in place, there is complete cooperation of the unions. We don't want our members operating in a manner that could be dangerous to their colleagues at work or to themselves. We are responsible.

I suspect that the people who started this movement in the US were doing it for an entirely different motive. It will not solve the problem either that management may have in mind or government, if it is to protect the health and welfare of people.

I do not believe in random testing, neither does my organization. It would not, in our view, get the results that the propaganda says will be achieved. There is always a way to hide to smoke a cigarette; you can do that with drugs too.

The emphasis should be placed on education of the dangers of drugs. There is significant success from this approach with cigarettes; smoking is dropping dramatically. Statistically we can prove that, with some precise statistics. The same thing can be done with this problem; and it is a problem, not of the workplace, but of society in general.

Arnold Jones

Dr Kirkbride raised a major stumbling block to any physician, that is if there is any testing done, what does the physician do with the results? There is no way in which a physician working in industry can provide the information that comes from those tests to his management or to the company. The physician cannot be

Arnold Jones *continued*

expected to render an opinion about whether a person is fit or unfit on the basis of that sort of test. A test comes back; it is positive for marijuana. I would defy any physician to say a person is unfit because there is a bit of marijuana showing in his urine. Until some mechanism can be resolved for the reporting of results, drug testing is out of place in the workplace.

AOMA (American Occupational Medical Association) tried to address this. AOMA in the US issued guidelines for physicians with regard to drug testing and I think it was a cop-out; they suggested that every person screened should provide consent for the physician to report to management. It does not strike me as being freely-given consent, if indeed given at all. Before I am part of that scene I want to know the consequences for the employee who refuses to give that consent. I want to emphasize that this is a major problem area if any screening is going to be done.

Group 2 occupational health professionals

Tony Hammer

It is interesting that Dr Jones mentioned that AOMA report. The principal result of the AOMA guidelines on drug testing was to highlight the difference between Canada and the US. One of the best illustrations was a clause that said that drug testing was justified "to preserve the good name of the company". I do not think that would go down very well here in Canada and I was rather disgusted; the Canadian representative on the Committee was too and tried unsuccessfully to get the clause removed.

Dr Jones is right. We physicians are in the middle and don't often have much choice. We firmly believe that it is not the role of occupational health professionals to engineer changes in society. We sometimes act as agents of management and on other occasions we enter into a doctor/patient relationship. We have to be very cognizant of our exact status in our daily work. We believe that testing tells you very little. The results are extremely difficult as a basis for decisions and actions that are fair or in any way scientifically justifiable. However, we don't believe they are completely useless; we feel that negotiated tests are justified in some circumstances.

We do not believe random testing is justified and we strongly suspect, although we are not the authority on this, that it is not legal. If it's not illegal yet, it should be soon.

The same goes for testing for safety reasons. This for us represents quite a change of view – after hearing from both sides (union and

Tony Hammer *continued*

management) of Air Canada in the workshop, we don't believe random testing is justified even in airline pilots or train drivers.

We don't believe pre-employment testing is justified. It may be legal.

There remains only one other category - just cause. We would support this if it could be negotiated and if there is an effective employee assistance program. However, we don't believe there is any distance too great to be placed between the EAP and drug testing programs.

We are confronted here with the nature of addiction; physicians see as much of this as anyone. It distorts the mind. We disagree with the union group about the usefulness of peer pressure in regard to a substance abuse problem. On average, for someone with an alcohol problem, it is 7 years from start of impairment to the time confrontation takes place. Where I work, there is quite a lot more "covering up" than confrontation by peers and supervisors; I have been guilty of that myself. The success rate in treatment for substance abuse is lousy. A few people claim to reach 85%—such figures are suspect because you have to look at how carefully cases are followed up and the kind of treatment that was given. The very best treatment services, and I mean full-blown treatment services for substance abuse with good follow-up, typically achieve 40 to 60% success rate over a two-year follow-up.

The power of persuasion is not that effective either. The majority of substance abusers survive in the workplace even though they may occasionally become involved in accidents. We sadly lack data on this as well as on the subject of how prevalent drug abuse is in society and in general in industry in Canada.

To illustrate how properly-conducted drug testing could be constructively applied in the workplace: take a situation where a worker is involved in an accident—a pilot, train driver, or reactor operator. If a worker is involved in an accident, maybe a fatal accident, under certain circumstances which would have to be defined, (I would not leave it to the interpretation of a supervisor intent on fulfilling perceived social obligations to stamp out this phantom), we feel it would be entirely justified to oblige a worker to undergo testing.

What do we do with the results? Unlike the other scenarios described, we have here an analogy to "the smoking gun". Some may question whether there is a causal relationship between the presence of drugs in the body and an accident. I am thinking here of morphine or alcohol which are central nervous system depressants, although marijuana could apply in certain situations.

Tony Hammer *continued*

A worker is impaired and has been involved in an accident; we feel it would be justified to test that worker.

We think that any program must be demonstrably to the benefit of workers, individually or as a group. Sometimes we have to face the fact that the rights of a group can conflict with the rights of individuals. This has come up in human rights legislation recently. We noted that rights of the individual have tended to come into ascendancy over those of groups in recent years.

We feel that any health professional who declines association with a drug or alcohol testing program not complying with conditions such as those that I have mentioned would be entirely justified in withdrawing his cooperation.

Essentially this is a plea for union/management negotiation on this subject. We reject random and pre-employment testing in any form, even for safety reasons. However, this is an isolated area which would far better be addressed by management in agreement with labour.

Reg Basken

I don't want to debate a lot of that. I think you have underlined that we are dealing with an extremely important question that is extremely difficult. Because people don't have the answers, they are grasping and testing is one of the things that lets us say "well at least we are doing something". You underline that by moving away from a major part of the testing controversy but still hanging onto it with the last grasp in one particular section.

The only argument I will give you on one of your statistics is that an identifiable alcohol problem can take 7 years of usage. That is because we pay no attention to it for years and that is because only recently have we said that alcoholism is something that can be related to a labour/management treatment process. Only recently have we had employee assistance programs and there are unions and companies all over the country that still reject them because they cost money, or unions negotiate money and forget about other things. I am not surprised by your 7 years. I lay odds on it that 10 years from now we will be saying 3 years, or maybe even 2 years if we use diligence in our efforts in our EAPs and union counselling.

We are cognizant of a whole set of abilities to deal with problems that we previously fired and transferred to another employer. If you had an alcohol problem 20 years ago, what did you do? If you worked for General Motors, GM fired you and you took your experience and went to Ford. You weren't drunk when you applied

Reg Basken *continued*

for the job so you got hired because of the years' experience. You got drunk at Ford, got fired from there and moved to Polysar; got drunk and went to Imperial Oil. All of a sudden, now we have developed programs which mean we no longer discard workers with problems so the 7-year figure will be substantially reduced in coming years. Your statistic is correct but the presence of that statistic recognizes that we spent many years doing nothing. Many companies still simply fire their drunks.

Tony Hammer

I would implore you not to hang onto the area of controversy you described and neglect the points I have addressed.

Jack Soutendam

There are two points I am uncomfortable with. At one point you said that the labour group doesn't accept that the presence of a drug has an effect on the individual worker. I would suggest to you that it is not the case. We do understand and accept quite well that the ingestion of any kind of drug will have an effect on the physiology or the biochemistry of the individual.

What we do object to is to justify the drug testing as a consequence of ingestion of a specific substance because in your estimation it would affect the safety of the individual or the company product. We must object to that because it is a judgment call. Without substantive evidence, scientifically satisfiable and unassailable, we cannot accept that the presence of a drug constitutes an unacceptable performance by an individual. Therefore, mandatory drug testing in unacceptable.

Tony Hammer

I am sorry if I did not make that clearer. Essentially we agree; if random testing detects evidence of drug or alcohol in the absence of impaired job performance, we do not think that disciplinary action is justified. All decisions should be based on work performance.

However, the finding of illegal drugs or alcohol in the blood after an accident of some significance, we feel, forces certain inferences. They would not be a random finding. We classify that as "just cause" testing, and think that appropriate disciplinary action would be in the interests of all parties.

Hank Gauthier

Unions have had to fight to obtain the right to have occupational health and safety in the workplace as a bargainable issue; they have had to fight for the right-to-know about stuff workers ingest in the workplace and what it can do to them.

There comes a point where suspicion comes into play. Particularly when management says you can trust us this time around; we can drug test for you and it will provide us with a solution to accidents.

I think we are missing that in the workplace there is tremendous peer pressure that statistics won't give us by drug testing; workers know if one has a problem, not on a one-shot basis but on a continuing basis. Unions and workers don't want people who are unsafe to work with. What management is risking in terms of trade-off is that when and if drug testing comes into place, these people will be attacking the drug testing instead of helping find solutions for the drug question. At least now everybody wants to do something about the drug problem in a positive way. But to go to drug testing, I submit to you that one side will be working against the other.

Tony Hammer

I don't want to reform society by the use of drug testing or by social action. We are confronted by drug abuse; it would be nice if people didn't feel they had to resort to substance abuse. I hope employers will play their role but I don't expect great change in the immediate future.

Peggy Nash

I am surprised and pleased to hear the physicians' positions on the pre-employment and random drug testing. I disagree with you on the just cause testing. I am concerned that if we do end up implementing tests in the event of a severe accident that may tend to relieve the focus on other factors that could have caused the accident. For example, in the Hinton train crash, it is my understanding that drug or alcohol abuse was not a factor. Had a test been taken and drugs or alcohol been found in the driver, I suspect that a lot of recommendations on working conditions and other safety factors might not have had the same impact. Giving that kind of test allows for an easy solution and tends to take the focus off other safety factors; I am concerned about that.

My second concern is how preventive that kind of testing would be. Does it address a substance abuse problem in the workplace? Does it address other working conditions that could give rise to an accident? It might, in practice, become a blame-the-victim approach.

Peggy Nash *continued*

You raised the issue of the effectiveness of substance abuse programs. I am not familiar enough with our program to give you parameters on how our statistic of 85% success rate was arrived at. I would be happy to get that information and forward it to you. Negotiated programs, union counselling programs, joint programs, where people feel they can go and talk to one of their peers and get non-punitive assistance do have a higher success rate. Our members and activists on the substance abuse issue feel the program has made a major dent in the problem.

Tony Hammer

You are absolutely right. If an agreement were negotiated for "just cause" testing, it could be abused. We would not cooperate with any program which would be portrayed as a substitute for EAPs or which ignored the other safeguards you describe.

Linda Wilcott

I am glad you made the point of mandatory drug testing undermining EAPs. At a seminar recently one of the topics was the incorporation of drug testing into EAPs. One of labour's concerns is mandatory drug testing coming in through the back door through EAPs. It is important to underline that the two are not compatible. One is based on trust and cooperative working relationships; the other is punitive and based on suspicion.

Tony Hammer

I know of no credible occupational physician who would tolerate the linking of the two.

Tom Towler

We argue a lot about statistics; but I have yet to run into anybody who is for bringing back capital punishment who believes one statistic that Eddy Goodman presents. The statistics as they unfold will not change anybody's mind in this room.

We are talking about a qualitative kind of subject. People in this room are surprisingly close in their views, although there are some differences. Those differences will change as we learn to work together on an issue that is, to me, one of the most important employee relations issues that we face in this country. I've been involved in a lot of situations where we have started a lot further apart than this.

One thing we all agree on is that we face intervention from government which could impact on the conduct of doctors in the

Tom Towler *continued*

workplace which would affect employee relations. One recommendation we should agree on is that we want to have some representation in what governments do. That is a common need we all have that we would agree to.

Gus Callaghan

It would be important because legislation may be imminent. All the parties here should indicate to Ministers the needs for proper and full hearings to make sure there is nothing rushed through. An issue of such magnitude and importance, which affects many things including our civil liberties, should be thoroughly examined with the fullest chance for interested parties, unions, professional people, managerial people, to have the fullest extent of input. This workshop should make its conclusions known.

Lillian Vine

You have called upon the group to make a collective statement. You worked very hard to sort out a very complex issue under wide discussion in Canada, and have come to much agreement. You are proposing some resolution to go forward from this group. Would you like to hear the reaction panel's view to that?

Reaction panel

Martin O'Connell

What struck me most forcefully was the unanimity of view that attention has to be shifted from testing to consideration of a problem or problems in the workplace where there are existing ways of dealing with them. What governments need to know and want to know is what is in the minds of the most affected parties. It was therefore helpful to hear a suggestion that a group like this would do something to let their views be known. Governments will respond to excited public opinion often in ways that continue the destabilization of the situation because no other voices are being heard by governments; they may be heard in small pockets, but they are not getting registered.

Secondly, there is much agreement here on jointness in the approach to issues that is quite contrary to the adversarial approaches which often get a great deal of public ventilation, more commonly in the US, I think, than in Canada. We are faced to some extent with a transborder migration of American anxieties which don't often get worked out in the joint approach.

Martin O'Connell *continued*

If there is any validity in that point, it's incumbent on groups such as yours representing labour and management and physicians in the workplace, to make their common views known because they're strikingly congruent. You must find a way of enlarging government and public awareness that you believe you see the way to solutions, and that they are in the workplace through negotiation and joint programs. Governments will generally be supportive of that kind of approach if they know about it and it is impressed upon them.

My reaction, trying to think as government, is who is the audience for your views? It is certainly beyond this room. Is it then enough to seek joint approaches at Polysar and then GM and then Air Canada, at each place separately or are there larger constituencies? Is there an effort on labour and management's part to come to a joint agreement thrashed out in joint sessions to come to some understanding and some approaches? I think you would find government would delay any pending interventions and want to support that way of going about it, which would be far more successful than anything that legislation could do.

We do know that the Deputy Ministers have been asked by the Ministers responsible for occupational health and safety in the provinces and territories and in Ottawa to review abuse in workplaces. There is an audience, the deputy ministers, in the federal government and all provinces and territories. Is there to be an approach to them? The joint approach from my perspective is the key to the way forward.

Jack Soutendam

We are not too sure just where the government stands, whether it is proposing legislation or not. If we make a presentation to the government at a time it is not intent on developing such legislation, then the impact of our response could potentially be filed away and lost.

We are particularly concerned, because we have been receiving communication from federal government representatives on where we stand on the mandatory drug testing issue.

We would like a public inquiry or a public examination of the issue. If the issue is gazetted, possibly as an amendment to Part IV of the Labour Code or some other regulatory document, in the Canada Gazette, it gives us potentially a 30-day period to respond. This may seem sufficient but it really isn't; the Gazette, which is the pertinent amended legislation or proposals to the amended legislations, partly depends on the mail service. It is not unusual for my association to receive a Gazette to which we have an option to respond well after the response period has expired.

Jack Soutendam *continued*

Several government agencies such as the Canadian Aviation Safety Board on at least one occasion have held an extensive public inquiry on a safety issue before amending legislation. I would like to have the members of the panel keep in mind that we don't want to lose the impact of what we have said here today but we also do not want to be left to respond to a gazetted issue which may not get to us in time. I would like to suggest the responsibility rests with the various levels of government to initiate a public inquiry into this issue.

John Kirkbride

The initiative in government at the moment is not to rush anything through. If there were any department pressing for action most quickly it would be Transport Canada, where a high level committee involving departmental staff, railway staff, other transportation people, Health and Welfare, Labour Canada, has met once for the first time about 3 or 4 weeks ago. It was immediately bedevilled by the lack of data. The data I produced at the start of our discussion, very confidential, are from that meeting, and raise more questions than they answer. I don't think anything will be rushed through without data.

To go for public hearings, some sort of inquiry, I am not at all in favour of that. I am in favour of attempting to obtain some data because without data we would be endlessly debating, maybe skillfully, but I don't think it would resolve this issue. I see how difficult it will be to get data, to do any form of controlled study; to develop a study is not going to be easy. The figures I presented were totally uncontrolled, thousands of variables could have come in.

In the absence of absolute information, extensive scientific information, we shouldn't get into testing; this is in some ways an attractive point but it flies against the general approach in occupational medicine. If there is a question about a toxic material and we have inadequate data, which is a common situation (formaldehyde for example—we don't know how important formaldehyde is as a human carcinogen), our reaction generally is to play it safe. I could use the argument that if we don't have absolute good scientific information that is an argument for a program; it was raised as an argument against introducing a program. It could be used both ways.

There was no discussion about post mortem testing of drugs. Nobody seemed to object to testing the people involved in the Hinton disaster. I presume that is considered acceptable by the group. (Note: It was discussed by Group 2.) This very much weakens the other arguments.

John Kirkbride *continued*

Tony Hammer advised that Polysar is a multi-national firm. I think we are going to see a number of drug testing programs of all shapes and varieties because of multi-nationals. I don't know if you are threatened by it, being pulled into a program which you personally oppose. You may find yourself in a very difficult situation. You mentioned that the individual physician should have discretion whether to be involved. Your masters in the US may not see it that way.

Tony Hammer

Perhaps I should describe Polysar. It is a Canadian company of about 6,000 employees, 50 per cent of whom are in Canada, owned by the Canada Development Corporation. Our plants are distributed in the US and Europe, China and various places but the direction comes from Canada. We are rather unique in Canadian industry, since we are not resource based.

John Kirkbride

Maybe I should have taken a more clear cut example, like GM. So physicians in GM or Dow maybe find themselves in a difficult personal situation, it will be a personal decision for them. I want data, and I would be prepared to see a fair amount of money spent on getting data; it couldn't be gotten cheaply. Any studies done would have to involve fairly large numbers, very carefully controlled. One advantage of studies would be to prevent rushing into anything; that is a very powerful feeling, which I would endorse. We do not want to rush into any program of this sort.

Jack Soutendam

You have said many things that substantiate a concern that we have. You suggested that a public examination of the issue is not something that you favour and that the government position in such a case would be to play it safe—which means we will have mandatory drug testing. This is exactly what we are worried about.

For example, a bill was issued by the federal government not so long ago to require mandatory reporting by physicians and optometrists who were examining any pilot, general aviation whatever, of any clinical finding in this patient which, in his/her opinion, would adversely affect the safety of an intended flight. This bill was promoted in the Gazette and the only change that we effectively accomplished was that the reporting physician would not report to the Minister but to the regional aero-medical or aviation medical officer. This bill has done something very significant. It has totally destroyed confidentiality between

Jack Soutendam *continued*

physician and patient. You are familiar with the identification that the pilot is now required to provide when he sees the physician.

I have great discomfort hearing you say that you have no inclination to accept the public inquiry concept; I would urge you to reconsider. You are working on this issue. I do not believe it is morally justified on the part of the legislative authorities in this country to develop this in the absence of comment from us.

Martin O'Connell

I don't think it is too helpful to wait to see a bill being gazetted and then take action in a public inquiry to try and roll it back. The attitude of the public would likely be that if government felt strongly enough and had enough data or enough grip on the issues to put out a bill, there must be something to it. You are fighting a very strong uphill battle. When a Prime Minister or President says we have to launch a war on drugs you are in a very large area of public anxieties that go very deep. My suggestion would be, since there is that much agreement, you make a joint statement, negotiate an agreement, not just in your company but perhaps in a few lighthouse agreements that would show the way. That would cool the thing out more than waiting for public inquiries.

Jack Soutendam

I certainly understand what you are saying. There is another concern we have. The group here has no responsibility for the general employment situation; it bothers me tremendously that we have the facility and the expertise to deal with issues before they actually happen, while a large portion of the labour and management groups in this country are without the facilities and material that we have to deal with issues. We are dealing with a trend-setting, a high impact issue. There should be no question about the ability we have to deal with this issue right now as far as lobbying is concerned. It is in place. I would suspect that coming away from here with the information we have would result in that kind of action.

But federal and provincial governments are not necessarily dealing with the elite group here, they are dealing with the entire population in the workforce. It is obvious in the discussions we have had in the last two days, and the remarks of the opening panel, that that group has no information about what is happening here. I think it is a moral obligation if not a very real one, in terms of implications of a promoted or prepared bill, to deal through a public inquiry with this issue. If ever the issue should arise that we are faced with a fait accompli, we have a serious problem.

Reg Basken

There is a real concern that the Transport Minister and maybe others have responded to the Reagan and Mulroney statements that there is a crisis in drug abuse in the workplace or in society; and that it is going to be handled through the workplace. That perhaps we don't have the advantage of pre-lobbying to say hold off; it seems like the process is too far gone for that. This may be our court of last resort.

Tony Hammer

Dr Kirkbride, you justified not having public hearings on the grounds that you needed more data. You will not get more data. The reason you don't have much data is because there is so little. I don't know of anyone undertaking studies. I have tried to set up some kind of study that will throw light on the situation in Canada, but it is extremely difficult to do a workforce survey on the prevalence of drug use; you cannot announce to the workforce you are doing it or you change the pattern of drug use—it is invalid. It may be absolutely impossible to get around this. Historically, studies of the association between alcohol use and accidents in industry are notoriously scarce, invalid, and confounded by multiple factors. I have some sympathy for people such as the airline industry which is about to have a solution shoved down its throat to a problem it does not have.

Neil Johnston

Halushka versus the University of Saskatchewan is the landmark decision concerning the collection of data for research, mandating the seeking of fully-informed consent. I could argue that the collection of data in the workplace, even to estimate the prevalence of substance abuse, should be covered by the terms of that decision. That further compounds the difficulty of obtaining data. I agree that if we wait for that to happen we have effectively solved the problem because we are never going to get testing in place.

Reg Basken

Dr Kirkbride, I want to point out one differential we see in this issue of drugs versus the formaldehyde you mentioned. There is a considerable difference to the approach that has to be taken to a substance that is workplace induced as a result of employment versus a substance that is brought in from the outside that is perceived to be a societal problem carried into the workplace. The formaldehyde, asbestos, benzene and others are workplace initiated, manufactured and induced. Those are health and safety issues and that is a differential that has been debated considerably. We are not talking about a workplace induced drug. If we were

Reg Basken *continued*

talking about aromatics produced in the chemical and oil industry we would be talking about it from an entirely different point of view and talking of corrective procedure.

John Kirkbride

I can argue an impaired colleague is a hazard to me. I can't choose that colleague, who is a factor of life in the workplace. If you have dangerous people in the workplace they are a hazard to themselves and to others. In that way I can compare a co-worker with formaldehyde.

Reg Basken

Maybe we should be considering the stresses in the workplace that bring about the use of drugs as an individual perception of a corrective measure. I do agree with you that an impaired person in the workplace is a hazard. There is a difference in the method of correction. You can correct an aromatic situation in the workplace, or a benzene or formaldehyde situation, with one set of procedures. We developed those. We haven't been able to deal with the question of alcohol and drug abuse in the same manner.

Lillian Vine

There is on the floor a very important suggestion that your conclusions be communicated to decision-makers; I don't think anybody is disagreeing that the suggestion needs to be acted on. You are an important group directly facing the drug testing issues right now. There are Deputy Ministers who said they were interested. Transport Canada is interested in the outcome of this meeting. The Deputy Minister, Health and Welfare Canada, said when we started talking about this workshop that she is interested. The Ministers responsible for occupational health and safety in provinces, territories and federally have said they are interested. Ontario is apparently taking the lead; I expect the Deputy Minister is prepared to hear what you have to say. Whether it is a report that you want to draft before you leave today or something you want to discuss informally and assign us to prepare, we would be pleased to help in any way.

Gus Callaghan

Do we agree that we should collectively make a joint statement? We could go forward with the major areas of agreement. I didn't think agreement would be achieved here, but quite surprisingly it has been. If we could get our concerns and views on paper in front of the Ministers before the legislative process, it might be useful.

Jack Soutendam

Dr Kirkbride mentioned there was a meeting in Ottawa about 2 or 3 weeks ago; Health and Welfare and Transport Canada seem to be the major players in this group. I would like to know why the meeting was called, who was invited, and what the topic of discussion was. If that meeting had as a basis for discussion of mandatory, random or just-cause drug testing, an inconclusive and probably unacceptable study produced in the US to come up with legislation in Canada, we have a real problem. Dr Kirkbride assured me that legislation was not presently under development to deal with the drug testing issue facing us. But legislation is being talked about. I reminded him that the Minister at some time mentioned on the West Coast we had a serious drug problem in Canada without any further follow-up on that statement. We don't have to wait for such a statement about drug testing legislation.

If it is acceptable to the workshop we should communicate with that group.

EDITOR'S NOTE: The conclusions of the workshop were communicated to the Task Force set up be Minister Crosbie; they have been distributed to the members for discussion.

Gordon Atherley

That is in the transport sector; there is also something in the occupational health and safety sector. David Lillico might help us to look at the question of information flow in the latter.

David Lillico

There is a committee, which I chair, of labour officials from all Canadian jurisdictions. In some jurisdictions, the same Minister has responsibility for labour and occupational health and safety and in some jurisdictions, that is split. This federal-provincial-territorial committee on the question of mandatory drug testing has begun to meet. I invite anybody to provide me with information, any input they wish to give to government. I don't suggest I am the only source for that.

At a meeting of all Canadian Ministers Responsible for Occupational Health and Safety in Quebec City last November, it was agreed that the committee would be struck. We are just getting under way. If people are interested in having input before things become solidified, now is the time; written submissions would be an appropriate way to have input.

Jack Soutendam

Writing to the committee as was suggested with our particular concerns and findings may be useful. I would like to see some document spelling out the terms of reference for this committee so we can deal with it actively. But I still see a point in favour of a public inquiry.

Reg Basken

Public hearings on this question are of less significance to me than organizations like CCOHS facilitating this group at this workshop, and discussion in other labour relations groups, because this is not a public issue. It is an issue that someone is trying to throw into the workplace to solve a public issue. What we are afraid of is a legislative process trying to solve an issue singularly at the workplace hoping it will solve all the societal issues too.

Let's take the other approach and say we held this workshop because this is an extremely important issue. We must say to the decision-makers not to overreact by thinking that drug testing is the end-all and be-all of drug abuse in society. Let us say we have another opinion and they should hear it before jumping into legislation. I would see the Centre taking the initiative in communicating to those in authority that it facilitated this workshop, that the participants reached substantial agreement, that here are the positions where there is agreement and those where there is less than agreement; then perhaps the three parties could decide to make a presentation.

Gus Callaghan

There is nothing precluding doing something else later on but there is some immediacy about what transpired here today. A mechanism should be developed to communicate to the appropriate people quickly.

Gordon Atherley

We can prepare a brief summary of the areas of agreement and disagreement. That can be transmitted to the Ministers, Deputy Ministers, and any committees. The strength is that this is a selected stakeholders group, with a sample of the important players in this drama. It has greater strength than each individual group going separately to make the pitch.

There is something unique about this. Here are occupational physicians, representatives of labour, fully-accredited representatives, and representatives of management speaking in a clear area of consensus on a very important issue. There are

Gordon Atherley *continued*

things they don't agree on but there is a substantial area of important agreement. That would be valuable to convey to the decision-makers.

We would prepare this summary as fast as we humanly can, get it back to the chairmen so that we are confident that what we are writing does reflect what's come from here. We will rely on the chairmen to get it back to us as quickly as they can.

We will try to find out what else is going on and keep in touch with you all.

Reg Basken

I did not want to leave the impression that I was excluding this question of finding out what went on in that meeting in Ottawa; they are not exclusive at all.

Gordon Atherley

In the same way, I hope we can keep in touch with David's committee to find out what it is doing and establish some communication.

The conclusion then is a summary prepared by the Centre, verified by the chairmen and sent out to the Ministers and Deputy Ministers as fast as we humanly can. It precludes nothing else, but it does seem a way of opening the door.

We have a tangible product from this process which will be first the summary and then the final document (the proceedings) which will have been verified by the chairmen and published by CCOHS. But it's your property; it does not become a statement by CCOHS but of you as a group. Our experience with the Medical Surveillance Workshop was that people find these statements very useful as a way of saying here is a rational approach upon which there was a consensus to approach a difficult problem. We believe you will find the product of this workshop just as useful in that sense. We will do our best to get the product ready in early fall.

There is as a by-product a comment made that testing emerges as an issue in its own right, not just drug testing, but AIDS testing or testing for lead in blood or pulmonary fitness in fire fighters. Some of you may be starting to wonder if we should be asking ourselves what we get from testing.

This workshop has had a process, it has had a product, it may have a by-product. This process is always successful in our experience. We have now done 3 workshops. What is comes down

Gordon Atherley *continued*

to is that when you get high calibre people together to have a discussion on an important issue around a well-planned framework, you get a high calibre product. The product has a special quality about it. What emerges is that the differences between the important players are much less great, the distance separating them is much less than people at first thought. That does not mean to say there is a phony consensus on everything. There are legitimate and genuine differences of opinion. It is surprising when these discussions take place in what we think is an appropriate environment just what emerges.

So if I could say thank you to you and also to our panel, to thank them for responding and for stimulating an excellent discussion. What we, the Centre, have gotten out of this process is a piece of information to which value has been added, that we could not ourselves ever add, which is beyond price. The mere fact that we have charged you a fee to come and add this value is the sort of audacity with which we live. We are a federally-funded organization and you are all taxpayers and you will be relieved to know how much we are recovering the cost.

I want to thank you very much for taking part in this. We the Centre will do our best to carry this forward. We will be reliable and trustworthy and look forward to other things developing out of this. We very much hope to stay in touch with you. We will put you all on the mailing list for *At the Centre* if you are not already there. We hope you will have not only a piece of information with value added to it but also further understandings of your own that will assist you when you go back to face these issues—and difficult issues they are. Thank you for coming, good working with you and best of luck to you all.

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